

## What the Justice System Can Do To Make a Difference

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- ◆ **Guarantee confidentiality.** Evidence shows that victims may not seek legal assistance, counseling, or help unless they are certain that their identity, communications, and records will be kept confidential.
- ◆ **Ensure that victims, advocates, victim/witness specialists, and lawyers understand the parameters of confidentiality.** Ensure that criminal justice and victim service professionals understand the existing privileges.
- ◆ **Tailor services, legal assistance, and advocacy to meet the requirements of immigrant victims of violence against women.** Provide services that are linguistically and culturally appropriate and tailored to a victim's cultural, religious, and spiritual beliefs.
- ◆ **Understand the impact of criminal convictions on the immigration status of victims and perpetrators.** Ensure that safety planning for immigrant battered women accounts for their immigration status and helps them avoid any conduct that might compromise their status.
- ◆ **Use state databases as supplements to National Instant Criminal Background Check System (NICS) background checks to prevent domestic violence perpetrators from obtaining firearms.**
- ◆ **Promote efforts to remove firearms from violent offenders who are prohibited from access or ownership pursuant to federal or state laws.** Enhance the enforcement of federal and state firearms prohibitions related to domestic violence.
- ◆ **Upgrade state crime victim compensation programs.** Implement confidentiality policies, expand categories of eligible victims and eligible providers, increase available funds, evaluate program rules and requirements, and conduct outreach campaigns to ensure victim safety and recovery.

## Chapter 5

# Additional Justice System Responses

### Victim Privacy and Confidentiality

#### Confidential Communications With Advocates and Counselors

Confidential communications are central to the safety and recovery of victims of gender-based violence. Evidence shows that victims may not seek legal assistance, counseling, or help without an assurance of confidentiality from an advocate or counselor.<sup>1</sup> Even those who seek assistance may fail to fully disclose important information if they learn that their communications with an advocate or emergency services provider are not confidential. A victim who participates in prosecution of the crime committed against her may find herself forced to choose between justice and privacy, particularly in cases involving sexual assault.

The success of the relationship between the victim and the advocate/counselor is based on trust. Trust can only be developed if a victim feels that she can fully and freely confide intimate information to her advocate/counselor. Because most domestic violence victims believe they will be endangered if the perpetrator learns that they have contacted an agency—and particularly that they have discussed legal options, safety strategies, and separation plans—the guarantee of confidentiality is critical. Sexual assault victims may share this concern, but their fears typically involve the public disclosure of private information.

A victim's expectations that her identity, location, and contact with a sexual assault or domestic violence program will remain confidential must be respected. Disclosure of information obtained

under promise of confidentiality may have a chilling effect on the help-seeking of the victim whose trust is betrayed and on all other victims who learn of this breach of guarantee.

Consequently, 33 states<sup>2</sup> and the District of Columbia have enacted statutes to protect confidential communications, advice, and records that result from the relationship between victims of sexual assault or domestic violence and their counselors at sexual assault or domestic violence agencies.<sup>3</sup> Confidential communications are usually broadly defined and include information given by the victim to the advocate/counselor, advice or information given by the advocate/counselor to the victim, and any records created as a result of the contact between them, including e-mail and phone messages. Whether a counselor qualifies for the privilege may depend on certain factors, including the number of hours of training completed by the counselor. In addition, there may be some statutory limitations on the privileges.

The type of information that victims wish to keep confidential and that is protected by law extends beyond information that affects the victim's safety to information that, if disclosed, may cause the victim personal pain or harm—including child abuse history, sexual history, sexual orientation, HIV/AIDS status, sexually transmitted disease history, financial history, mental health history, marriage history, school records, drug and alcohol treatment records, personnel files, employment history, and communications with doctors, therapists, spouses, religious counselors, lawyers, or drug and alcohol counselors.

State statutes, case law, and federal laws and regulations protect to differing degrees these confidential communications and records from disclosure. Some statutes cover either sexual assault or domestic violence counselors, while others address both, including in the definition of “counselor” trained advocates, volunteers, and crime victim counselors. Some statutes protect shelter locations and shelter records and specifically exclude those records from disclosure under the state’s open records law. Some laws specifically protect the identity of not only the client, but also the advocate or counselor. Some state and federal funding statutes and regulations require funded service providers to implement confidentiality policies as a condition of funding.

The type and level of protection granted by confidentiality statutes or case law vary, and may include either an absolute (where disclosure is not permitted under any circumstances) or a qualified privilege.<sup>4</sup> Under an informed consent process, a victim can waive the confidentiality privilege. Generally there is no waiver of privilege when a third party, such as an interpreter, is present to facilitate communication between the victim and the advocate/counselor. Victim testimony about the crime does not waive the privilege. Some state laws provide that confidentiality dies with the victim; others provide that it survives the victim or that the executor or administrator of the victim’s estate may waive it.

Communications with victim/witness specialists in law enforcement or prosecution offices generally are not protected against disclosure, and information shared by a victim with a victim/witness specialist is likely to be shared with law enforcement personnel, prosecutors, and even the perpetrator’s attorney in a criminal case. Similarly, records kept by victim/witness specialists are not protected.

In some states, limited privileges give way to defendants’ rights. In practice, most state statutes or case law that limits the confidentiality privilege requires that any records or testimony that the defendant seeks must first be reviewed *in camera*,

i.e., by the judge in chambers. Grounds for waiving the confidentiality privilege in some statutes include a decision that the probative value of information concerning the victim’s physical appearance at the time of injury, matters of proof regarding the chain of custody of evidence, situations in which the counselor has reason to believe the victim may have committed perjury, and any proceeding by the victim against the counseling agency or counselor outweighs the risk of disclosure.

Even when a privilege is absolute, there may be statutory exceptions that require disclosure. The most common exceptions include mandatory reporting of suspected child abuse or neglect, disclosure of information when there is imminent risk of death or serious bodily injury, or disclosure that the victim is about to commit a violent crime. Some state statutes provide that partial disclosure of privileged or confidential information may require full disclosure of all privileged or confidential information.

## **Confidentiality of Location and Personal Privacy Concerns**

Court records, voter registration records, motor vehicle registration information, school records of the victim or her children, or other publicly available documents may include private information that could compromise victim safety. Most states now provide that a petitioner’s address can be kept confidential as part of the relief in a protection order. Many state statutes also specify that crime victims generally, or victims of sexual assault or domestic violence in particular, can keep their addresses and telephone numbers confidential.

A few states have implemented address confidentiality programs, which provide procedures for a battered adult to obtain an alternative mailing address as a way to keep her location confidential.<sup>5</sup> The Social Security Administration has rules that allow domestic violence victims to change their Social Security numbers to protect their privacy.<sup>6</sup>



Outlined below are specific actions that legislators, court administrators and staff, law enforcement personnel, prosecutors, and advocates can take to ensure the confidentiality of victims of violence against women.

## **Secure Confidentiality Through State or Tribal Law**

### **1. Establish confidentiality programs that prohibit public disclosure of a victim's location.**

- ◆ Nine states have adopted address confidentiality programs that allow victims to obtain an alternative mailing address to more safely vote, receive service of process, and protect their current address from their perpetrator.

### **2. Enact specific statutory protections for confidential communications (including advice, written and electronic records, and identifying information) between sexual assault and domestic violence victim advocates/counselors and victims.**

- ◆ Protect, by statute, the confidentiality of victims' identity, location, and contact with a victim advocacy program or therapist.
- ◆ Limit any *in camera* review of confidential information to criminal cases and then upon a showing of specific need.
- ◆ Establish that the duty to assert privilege on behalf of the victim lies with the holder of privileged information.
- ◆ Consider, where appropriate, extending the right to claim the privilege to teenagers. In situations in which parents' or guardians' interests contradict the victim's, it could be detrimental to allow parents/guardians access to records or to waive privilege.
- ◆ Establish that, when appropriate, confidentiality extends beyond the death of the victim, but that the executor or administrator of her estate may waive the privilege.

### **3. Grant victim advocates and counselors the highest degree of privilege possible to limit perpetrator access to victims' private information.**

- ◆ Impose clear and consistent rules for confidentiality in situations in which privileges may overlap. For example, when an advocate works

closely with an attorney on a particular case, each professional has his or her own privilege, and the extent of the attorney's privilege may be greater (for example, the attorney is probably not obligated to report suspected child abuse or neglect, while the advocate may be).

### **4. Ensure protection of a victim's due process rights when state law provides defendants with access to a victim's personal information.**

- ◆ Protect the victim's rights to receive notice and opportunity to be heard before information is released.

### **5. Consider exempting the records of sexual assault and domestic violence programs from open or public records laws, even if the programs receive state or federal funding or are public agencies as defined by state law.**

- ◆ Open records laws in some jurisdictions may be inconsistent with confidentiality laws that protect counselor-victim communications. Confidentiality cannot be ensured if a domestic violence or sexual assault organization is required to turn over records on request per an open records law.

### **6. Enact statutes that provide for the confidentiality of sexual assault and domestic violence fatality reviews.**

- ◆ Absent the safeguard of confidentiality, many agencies may choose not to collaborate with community partners on fatality reviews, concluding that any joint action will compromise professional privileges or organizational rules of nondisclosure. Without statutory protection of these deliberations, vital information may be lost and the community's capacity to devise homicide/suicide prevention strategies may be diminished.

### **7. Provide that a victim's disclosure of information to a crime victim compensation program is confidential.**

- ◆ Many sexually assaulted, battered, and stalked adults are entitled to compensation under state crime victim compensation programs. The price for exercising that right should not be the release of identifying information about the victim.

**8. Create statutory provisions that permit a victim of domestic violence to change her name without public notice.**

- ◆ Many victims of domestic violence attempt to change their names as a way to hide from batterers. Often, state laws require public notice of a name change, which could thwart the purpose of the name change.

**9. Create statutory remedies that permit victims to be compensated for breaches of confidential communications.**

- ◆ Give victims of sexual assault, domestic violence, and stalking accelerated access to courts to seek injunctions against the disclosure of confidential information.
- ◆ Provide civil and criminal remedies for the unauthorized release of confidential information that are similar to provisions in the law that penalize release of confidential information regarding HIV/AIDS status.

**10. Enact statutes that protect the privacy of court proceedings, consistent with constitutional limitations.**

- ◆ Allow victims to request that records be sealed at the conclusion of a trial.
- ◆ Seal visual evidence, such as videos, in sexual assault cases.

**The Role of Court Administrators and Staff**

**11. Limit access to electronic and hardcopy information that could compromise a victim's confidentiality, privacy, or safety.**

- ◆ Protect access to electronic databases of civil protection orders (including petitions, service sheets, motions, orders, suspensions, or modifications) from the general public, Temporary Assistance for Needy Families (TANF) offices, child support enforcement authorities, and child and youth agencies. Protection order information should be available only to law enforcement, prosecution, probation, and parole offices.
- ◆ Remove a victim's name, address, and other identifying information (such as social security number, phone number, and work address) from

court records or other documents that are publicly available.

- ◆ Do not use court databases to track the whereabouts of victims of sexual assault or dating or domestic violence.

**12. Examine defendant applications for disclosure carefully when a criminal court determines that a victim privilege is qualified rather than absolute.**

- ◆ Require a specific, fact-based showing that the confidential material sought is directly relevant to a claim or defense and that the confidential communication is of such consequence to a just outcome for the case that failure to admit it would render the proceeding fundamentally unfair and constitute an unconstitutional denial of the defendant's right to due process.
- ◆ Undertake judicial review of privileged information about victims only when the counter-vailing interest of the criminal defendant rises to a constitutional level.
- ◆ When the court concludes that disclosure is required, limit release to the exculpatory material and avoid releasing information that will compromise the safety, agency, and privacy of victims.
- ◆ Consider issuing protection orders that limit disclosure of the released information to the specific purposes for which it is constitutionally required.

**The Role of Law Enforcement and Prosecution Personnel**

**13. Safeguard the addresses and contact information of victims of sexual assault, dating and domestic violence, and stalking.**

- ◆ Keep confidential contact information for victims of sexual assault, dating and domestic violence, and stalking out of reports or case files; such information should be kept separately to avoid inadvertent disclosure to perpetrators.
- ◆ Do not disclose information about shelter addresses, friends or family offering temporary housing, or people who agree to be telephone contacts for victims.

**14. Inform victims about the release of police incident reports, investigative reports, exculpatory information, and related materials to the defendant and his counsel.**

- ◆ Inform victims about all information that may or will be disclosed to the defendant.
- ◆ Secure all databases containing confidential victim contact information that are used to comply with state laws on notifying victims about legal proceedings, the custodial status of offenders, and probation and parole deliberations and outcomes. Ensure that only those people responsible for notifying victims have access to information about their whereabouts.

**15. Establish policies that specify the parameters of confidentiality between victims of sexual assault and dating and domestic violence and the victim/witness specialists employed by law enforcement and prosecution offices, and between victims and community-based advocates located in such agencies.**

- ◆ Disclose who may have access to the information shared with the victim/witness specialist (such as police officers, prosecuting attorneys, prosecutor's expert witnesses, and defense or family law attorneys for the perpetrator). Inform victims of limitations on nondisclosure or confidentiality prior to any interview with them.
- ◆ Provide victims with a concise and understandable written version of the agency's nondisclosure guidelines.

**16. Inform victims of the differences in confidentiality privilege for victim/witness specialists working for law enforcement agencies or prosecutors and for advocates/counselors, as granted by privileged communication statutes.**

## **The Role of Administrators of Victim Advocacy Agencies**

**17. Adopt comprehensive confidentiality policies.**

- ◆ Develop policies and procedures that provide the greatest protection available under state law for victim confidences, communications, and records.<sup>7</sup>

**18. Avoid employing advocates or counselors who also serve as victim/witness specialists for law enforcement or prosecution offices.**

- ◆ Because an advocate or counselor may have a protected confidential relationship with a victim and a victim/witness specialist may not, it is important to identify clearly the role in which a professional is acting at any given time.

**19. Consult counsel regarding advocate presence during a victim's communication with persons outside the agency, and establish policies that guide practice to not compromise the confidential communications privilege of victims.**

- ◆ Laws may specify that a communications privilege is made void by communications in the presence of a third party. Advocates or counselors who accompany victims to interviews with persons working outside their agencies (e.g., police, prosecution, or child welfare personnel) must make clear that those communications do not generally fall under the privilege.
- ◆ A victim of sexual assault or dating or domestic violence may request that an advocate or her counselor be present when she meets with an attorney. The advocate's presence may compromise the attorney-client privilege, or the attorney's presence may waive the advocate-client privilege. Advocacy or counseling agencies and attorneys must recognize the different privileges that apply to communications with the same client, and when and how confidentiality may be compromised by the presence of other parties.

## **The Role of Administrators of Funding Agencies**

**20. Require that any group awarded funds for serving victims of sexual assault, dating and domestic violence, and stalking implement confidentiality policies related to communications, advice, exchanges, and records.**

**21. Conduct program and fiscal audits or reviews in a manner that protects the identities and privacy of the individuals served.**

- ◆ Insist that names and other identifying information be removed from the information provided to the reviewer.

# Violence Against Immigrant Women

Immigrant women come to this country with great hopes for what the United States will offer them—hopes that may be frustrated as they face overwhelming cultural, linguistic, and social changes in their lives. These challenges are compounded when an immigrant woman is a victim of sexual assault, domestic violence, or stalking.

Until recently, an immigrant woman who sought lawful permanent residency in the United States had to rely on her U.S. citizen or lawful permanent resident spouse to file and follow through on her immigration petition. If her spouse was abusive, the control he had over the application process could obstruct her efforts to obtain or maintain the lawful immigration status she needed to achieve independence from her abusive husband. In 1994, Congress remedied this problem by passing the battered immigrant women provisions of the Violence Against Women Act (VAWA).<sup>8</sup> The Violence Against Women Act of 2000 (VAWA 2000) strengthened and improved access to these protections.<sup>9</sup>

The statutes and regulations governing the VAWA immigration process are highly complex. Immigrant victims of violence against women are likely to need help from advocacy organizations, law enforcement, legal services providers, counseling agencies, social services, and economic assistance programs. They may not have work authorization, and thus may not be able to survive economically without their abusers. They may feel lost in the American justice and social services systems. They may not seek help outside the home because they have been raised to keep their victimization secret or because they have been disillusioned by the justice systems in their home countries. Due to isolation or language barriers, abusers may be the victims' only source of information about law enforcement or the criminal justice system. Abusers may tell victims that police will not

believe them if they summon police for help. Battered immigrants often fear that their abusers will carry out threats to have them deported, kidnap their children, or harm family members if they seek help. Thus, new approaches must be undertaken to tailor services, legal assistance, and advocacy to meet the requirements of these victims and to do so in a manner that ensures confidentiality and is linguistically competent, culturally welcoming, and highly knowledgeable about legal and social services options.

Outlined below are specific actions that staff and volunteers at victim advocacy programs, immigrant rights organizations, law enforcement agencies, courts, and law firms can take to end violence against women.

## The Role of Administrators of Victim Advocacy Programs

**1. Locate victim advocacy services where immigrant victims of sexual assault, dating and domestic violence, and stalking can easily access them.**

- ◆ Whenever possible, locate services for immigrant victims of sexual assault, dating and domestic violence, and stalking in their own communities, including worksites.

- ◆ Conduct outreach to immigrant communities through existing community-based programs, such as immigrant rights organizations.

**2. Ensure that offered services are culturally appropriate.**

- ◆ Work with community-based immigrant rights groups to gain a basic understanding of cultural, religious, or spiritual principles that may guide immigrant client decisions and reactions to sexual assault, dating and domestic violence, and stalking.

- ◆ Teach staff to appreciate the cultural, religious, and spiritual beliefs that clients may rely on to survive, overcome, or heal from these forms of violence.

- ◆ Ensure that shelter-based programs can accommodate battered immigrants' dietary practices or customary activities.

**3. Ensure that staff and volunteers can communicate with immigrant victims of sexual assault, dating and domestic violence, and stalking in their own languages.**

- ◆ If bilingual staff or volunteers are not readily available, collaborate with an agency or program that can provide interpreter services.

**4. Develop specialized services and procedures for advocacy on behalf of immigrant victims of sexual assault, dating and domestic violence, and stalking.**

- ◆ Offer services tailored to battered immigrants' needs. Become familiar with the immigration process and refer clients to local and national resources that assist immigrant battered women.
- ◆ Institute protocols to help women develop and safeguard documents and evidence that are essential to their immigration applications.
- ◆ Ensure that safety planning for immigrant battered women accounts for their immigration status and helps them avoid any conduct that might compromise their status.
- ◆ Offer immigrant survivor peer groups that provide access to advice, support, and advocacy.

**5. Understand any statutory limitations on the use of federal funding to provide services to immigrant victims.**

- ◆ Federally supported in-kind benefits that are not based on a recipient's income or resources and that are necessary for the protection of life and safety are available to immigrant victims regardless of their immigration status. Such assistance includes shelters for battered women. Be aware that federally funded programs that refuse to serve immigrant victims may be violating federal antidiscrimination laws.

**6. Develop alternatives to shelter-focused services to protect the safety of battered immigrants who cannot use services or legal protections that separate them from their families.**

- ◆ Recognize that some immigrant battered women will choose shelter-focused services, whereas others may feel uncomfortable outside their families and communities.
- ◆ Make arrangements for alternative safe housing with extended family, rather than encouraging women to use services or legal protections that compromise the support of family and friends.

- ◆ Develop alternative safety protocols such as providing the immigrant with a mobile phone that is programmed to dial 911 and services tailored for immigrant women.

**7. Ensure that staff and volunteers who help immigrants apply for public benefits know the laws that permit and prohibit immigrant victims from using such programs.**

- ◆ Help immigrants apply for public benefits for which they are eligible, including battered immigrants who are eligible for relief under VAWA and may be eligible to receive other benefits.

## **The Role of Law Enforcement Personnel**

**8. Respond to immigrant victims of sexual assault, dating and domestic violence, and stalking in a linguistically and culturally meaningful manner.**

- ◆ Recruit and train personnel with adequate linguistic abilities to ensure that no immigrant victim's safety will be compromised because of language barriers. Use on-call interpreter services as necessary.
- ◆ Never ask the alleged perpetrator of abuse, children, or neighbors to interpret on behalf of an immigrant victim.
- ◆ Develop training programs in collaboration with victim service agencies to educate personnel about the cultural, religious, economic, or immigration issues that may affect immigrant victims' decisions on and reactions to sexual assault, dating and domestic violence, and stalking.

**9. Understand the fears that many immigrant victims have regarding police interventions, and develop procedures for mitigating those fears.**

- ◆ Understand that immigrant victims of sexual assault, dating and domestic violence, and stalking may fear law enforcement for a variety of reasons.
- ◆ Recognize that perpetrators of violence, as part of a continuing pattern of abuse, may deliberately misinform victims about their rights and responsibilities under U.S. law.



- ◆ Conduct outreach programs in immigrant communities (in cooperation with trusted community programs) to help immigrant victims understand how the police and the law can help them.
- ◆ Carefully consider the consequences that inappropriate arrests may have for immigrant victims. Dual arrest, or arrest of an innocent victim if it leads to a conviction, could make the victim ineligible for immigration relief under VAWA and result in her deportation. When innocent immigrant victims are arrested, they may plead guilty because they need to return home to their children quickly, without understanding the impact a guilty plea may have on their immigration status.

## **The Role of Court Administrators and Personnel**

### **10. Respond to immigrant victims of sexual assault, dating and domestic violence, and stalking in a linguistically and culturally meaningful manner.**

- ◆ Translate relevant court instructional materials, rules, and forms into the languages spoken in the immigrant communities within the judicial district. Provide clerical assistance to pro se litigants in an appropriate language.
- ◆ Improve and expand court translation services, and establish standards of professional practice for court translators.
- ◆ Train judges and court personnel to enrich their understanding of cultural, religious, economic, or immigration issues that may influence immigrant victims of sexual assault, dating and domestic violence, and stalking.

### **11. Develop protocols to facilitate access to legal justice for immigrant victims.**

- ◆ Recognize and respond to fears of deportation, which make battered immigrants afraid to ask for legal help through civil and criminal courts. Inform victims that guidelines clarify that the only agencies affirmatively required to report information about persons they know to be undocumented are state, federal, and local agencies that administer Supplemental Security

Income (SSI), TANF, food stamps, and housing benefits.

### **12. Employ creative and culturally appropriate remedies when issuing protection and custody orders.**

- ◆ Provide creative forms of relief that are consistent with immigrants' cultural norms and religious beliefs.
- ◆ Do not allow perpetrators of violence against immigrants to invoke cultural norms as a justification for violent, abusive, or criminal behavior.

## **The Role of Attorneys and Victim Advocates**

### **13. Always work with an immigration law specialist when providing assistance to immigrant victims of sexual assault, dating and domestic violence, and stalking.**

- ◆ Avoid taking action that might harm an immigrant victim's ability to obtain or maintain lawful immigration status. Be aware that seemingly unrelated issues, such as the contents of a police report, can adversely affect a client's immigration status. Legal advocates, lawyers, or prosecutors should refer immigrant victims to immigration specialists immediately and coordinate their work with that of immigration experts.

### **14. Understand the impact of criminal convictions on the immigration status of victims and perpetrators.**

- ◆ Consider the risks to immigrant victims related to criminal prosecution of perpetrators before commencing criminal proceedings against assailants. Consult victims about the costs and benefits of prosecuting abusers in light of the potential impact on the immigration status of both victim and perpetrator. Understand that conviction of an innocent victim for any criminal offense could prevent her from accessing VAWA immigration relief and could result in her being deported.

### **15. Respond to immigrant victims of sexual assault, dating and domestic violence, and stalking in a linguistically and culturally meaningful manner.**

- ◆ Obtain training to ensure that services provided are responsive to the personal, cultural, and immigration needs of immigrant victims.

Understand the importance of confirming that no cultural norm or religious belief is a justification for violent behavior or for violations of human rights.

## **Federal Support for Assistance to Immigrant Victims**

**16. Sponsor training to ensure that the bench and bar, law enforcement, and victim service programs understand VAWA and its impact on immigrant victims of sexual assault, domestic violence, and stalking.**

- ◆ Recognize that the complexity of statutes and regulations governing VAWA immigration relief make it crucial for an immigrant victim of sexual assault, domestic violence, or stalking to coordinate work on her immigration application with other legal and economic assistance.

## **Firearms**

Firearms often pose a grave threat to the lives of victims of sexual assault, dating and domestic violence, and stalking. According to Federal Bureau of Investigation (FBI) statistics, women are far more likely to be killed by a spouse, intimate acquaintance, or family member than to be murdered by a stranger,<sup>10</sup> and firearms are the most common weapons males use to murder females. In 1998, for homicides in which the weapon could be identified, 54 percent of female victims (978 out of 1,825) were shot and killed with guns—more than 60 percent by male intimates.<sup>11</sup>

The federal Gun Control Act of 1968<sup>12</sup> prohibits the sale of firearms to certain enumerated persons.<sup>13</sup> Congress recognized the danger that firearms pose to victims of domestic violence when it passed four amendments to the Gun Control Act in 1994 and 1996. Section 922(g)(8) of Title 18 prohibits persons subject to qualifying protection orders from shipping or transporting any firearm or ammunition in interstate or foreign commerce, possessing any firearm or ammunition in or affecting commerce, and receiving any firearm or ammunition that has been shipped or transported in interstate or foreign commerce. Section 922(g)(9) of Title 18 imposes the same prohibitions on

anyone who has been convicted in any court of a misdemeanor crime of domestic violence. Related Sections 922(d)(8) and 922(d)(9) prohibit knowingly selling or disposing any firearm or ammunition to persons disqualified under 922(g)(8) or 922(g)(9).

Some state statutes also prohibit the purchase, possession, transfer, or disposal of firearms and ammunition and prohibit the issuance of or provide for the revocation of licenses to purchase, possess, carry, or conceal firearms for cases in which the applicant is the subject of a restraining order. Some state codes give specific direction to law enforcement about affirmative enforcement of these prohibitions. Some state statutes make it a crime to violate a firearms prohibition in a protection order. Other statutes prohibit the possession, purchase, or control of a firearm by persons charged with or convicted of sexual assault, dating or domestic violence, or stalking. Some state criminal codes also contain provisions that require forfeiture of weapons upon conviction of a crime of violence. Some penalize the seller or transferor of a firearm to a person who is the subject of a protection order or convicted of a crime related to violence against women.<sup>14</sup>

Enforcement of firearm prohibitions is facilitated by the national background check system or by state background check systems. The Brady Handgun Violence Prevention Act (Brady Act)<sup>15</sup> requires federal firearms licensees (FFLs) to conduct a background check before the sale or transfer of a firearm to determine whether the potential transferee is prohibited under federal law from possessing a firearm. The background check is conducted through the National Instant Criminal Background Check System (NICS); some states conduct the Brady background check through their own system rather than through NICS.<sup>16</sup> About one-half of the states handle all or some of their checks; the rest rely on the federal system.

From November 30, 1998, to November 30, 2000, NICS processed more than 17 million inquiries and prevented more than 300,000 prohibited persons from purchasing firearms from federally licensed

dealers. Domestic violence convictions or restraining order prohibitions accounted for 18 percent of the rejections.

Outlined below are specific actions that state legislators, law enforcement and prosecution personnel, court administrators, departments of public safety personnel, and related professionals can take to end violence against women.

## **The Role of Legislators**

**1. Enact codes that prohibit access to and ownership of firearms by perpetrators of sexual assault, dating and domestic violence, and stalking; deny or revoke the firearms licenses of such perpetrators; provide for confiscation of firearms; and penalize perpetrators who fail to comply with state law or court orders on firearms possession.**

- ◆ Enact statutes that prohibit convicted dating or domestic violence perpetrators or persons with restraining orders issued against them from possessing firearms.
- ◆ Authorize courts to direct that perpetrators subject to protection orders surrender their firearms, ammunition, and licenses and not possess, exert control over, or acquire other weapons during the duration of any protection order.
- ◆ Enact enforcement codes that instruct law enforcement to seize and retain firearms.

**2. Enact codes to establish and enhance state criminal background check systems.**

- ◆ Consider including checks of state databases as supplements to NICS background checks.<sup>17</sup>

## **The Role of Law Enforcement and Prosecution Agency Personnel**

**3. Facilitate enforcement of federal firearms prohibitions related to violence against women.**

- ◆ Ensure that all state and local police officers, sheriffs, prosecutors, and trial judges understand federal VAWA firearms prohibitions.
- ◆ Coordinate with the Bureau of Alcohol, Tobacco and Firearms (ATF), the FBI, and the local U.S. Attorney's Office to fully investigate and

consider for prosecution violations of federal domestic violence prohibitions, and train all personnel on relevant protocols and procedures.<sup>18</sup>

## **The Role of Court Staff and Administrators**

**4. Facilitate enforcement of federal firearms prohibitions related to violence against women.**

- ◆ Amend state protection order forms to include the elements that would be required to meet the standard of Title 18 U.S.C. §§ 922(g)(8) and 922(g)(9).
- ◆ Obtain at least one unique identifier for the perpetrator (e.g., date of birth, driver's license number, Social Security number), and include it in the protection order or on a cover sheet.
- ◆ Provide oral notice of 18 U.S.C. §§ 922(g)(8) and 922(g)(9) to parties present at protection order hearings.

**5. Order relinquishment of firearms, ammunition, and permits as part of the relief granted in a protection order or as release conditions and terms of probation/parole.<sup>19</sup>**

- ◆ When the state protection order codes or criminal codes allow it, include this relief—even if a firearm was not used or threatened to be used in stalking or previous sexual assault or dating or domestic violence incidents—in light of evidence that perpetrators of these crimes tend to escalate the violence over time. Removal of firearms also increases the safety of law enforcement officers who must respond to protection order violation calls. Potential loss of a weapon may also serve as a deterrent for some perpetrators.
- ◆ When the state protection order codes do not specifically authorize such relief, use any enabling provisions in the codes to impose firearms limitations on perpetrators.<sup>20</sup>

**6. Develop mechanisms in collaboration with law enforcement and probation to enforce provisions in protection and other court orders that restrict firearm possession or require firearm relinquishment.**

- ◆ Issue orders that specify that firearms, ammunition, and licenses or permits are to be surrendered and direct that these items be surrendered

to a named law enforcement agency by a certain date and time, preferably immediately after court proceedings or upon service of a protection order.

- ◆ Ensure daily distribution of orders, firearms face sheets,<sup>21</sup> and related information by the court to local law enforcement, the statewide protection order registry, and the person responsible for sending protection order information to NCIC.
- ◆ Expedite the execution of warrants to search for and seize weapons when they are not surrendered pursuant to court order. Similarly, issue search and arrest warrants for offenders who do not comply with directives to surrender firearms.
- ◆ Inform judges and prosecutors about compliance with orders at the end of the designated relinquishment date.
- ◆ Ensure that firearms are stored in appropriate, secure locations.<sup>22</sup>
- ◆ Develop protocols for ordering the surrender or seizure of all firearms from law enforcement, corrections, probation, and military personnel who have been convicted of a qualifying domestic violence misdemeanor or who are subject to any qualifying protection order.<sup>23</sup>
- ◆ Develop protocols for return of firearms when appropriate, and for forfeiture and destruction of unclaimed firearms.

## **The Role of the State's Attorney General and Public Safety or Police Personnel**

**7. Promote efforts to remove firearms from violent offenders who are prohibited from access or ownership pursuant to federal or state laws, and enhance the enforcement of federal and state firearms prohibitions related to VAWA.**

- ◆ Establish or upgrade the statewide protection order registry to ensure that it includes all of the enforceable protection orders issued in the state.
- ◆ Institute mechanisms for rapid entry of civil and criminal protection orders into the NCIC Protection Order File (POF), as well as state and local registries. Efforts should be undertaken to ensure that all orders comport with POF requirements.<sup>24</sup>

- ◆ Ensure that the appropriate Brady indicator<sup>25</sup> is entered on orders sent to the NCIC POF.<sup>26</sup>
- ◆ Require that any state criminal background check system be able to identify firearms prohibitions, including protection orders, conditions on release, or terms of probation or parole related to firearms. Where background checking systems are electronic, links should be established with state protection order, bail, and sentencing databases.

## **Crime Victim Compensation**

The losses sustained by victims of violence against women are substantial. If victims are to achieve safety and recover, the range of expenses for which they can be compensated must be expanded. States have begun to enlarge the categories of compensable expenses through state-administered crime victim compensation programs. In a handful of states, domestic violence victims may receive relocation expenses, with one state providing for 3 months of rental costs for dislocated victims. A few states pay for property loss beyond personal medical devices, and others provide compensation for victim pain and suffering.

The Office for Victims of Crime (OVC) within the Office of Justice Programs of the U.S. Department of Justice was formally established by Congress in 1988 through an amendment to the Victims of Crime Act of 1984 (VOCA). OVC administers two major formula grant programs, victim compensation and victim assistance. OVC now disburses grants to every state, the District of Columbia, the U.S. Virgin Islands, and Guam to support victim compensation programs.<sup>27</sup>

Since 1986, more than \$854 million in compensation funds has been disbursed by state compensation programs. VOCA dollars account for an average of 29 percent of the funding distributed by these state compensation programs. The annual allotment for federal compensation funds has increased 350 percent since the inception of the VOCA program. The two VOCA funding streams



provide significant assistance to victims of sexual assault, domestic violence, and stalking.<sup>28</sup> The maximum amount paid to a crime victim varies by state. Most states authorize awards up to \$15,000 or \$25,000, but the median per victim award is approximately \$2,500.<sup>29</sup>

VOCA victim compensation funds may be used to pay for a victim's medical or dental costs, mental health counseling, funeral and burial costs, and lost wages or loss of support,<sup>30</sup> but federal dollars cannot be used to pay for property damage or property losses except for personal medical devices. State grantees may offer compensation for other types of expenses as authorized by statute, rule, or established policy, including necessary living space modifications and equipment to accommodate physical disabilities resulting from a compensable crime. Nonetheless, most victims of sexual assault, domestic violence, and stalking are not able to fully recover the costs or losses sustained from the violence due to eligibility limitations and requirements.

Reimbursement for the cost of forensic examinations of sexual assault victims continues to be an issue of great concern. As documented by The Urban Institute in its 1998, 1999, and 2000 evaluations of the STOP Formula Grant Program, the extent to which states pay for this cost varies widely.<sup>31</sup> Victims and hospitals or other facilities that perform forensic exams are still likely to be expected to bear the cost of such exams, or face hurdles when they seek reimbursement from police departments, special funds, or, as the payor of last resort, the state compensation program.

Sexual assault victims justifiably fear disclosure of information that may be used against them if they file an insurance claim to cover the cost of the forensic exam. Disclosing to their health insurance providers that they have been sexually assaulted is unacceptable to many survivors of sexual assault. Victims also may not want to reveal the sexual assault to their primary care physicians or have the sexual assault included in medical records. They may fear that their husbands or parents will discover that they have been sexually assaulted or

that persons handling medical claims for employers will not be discreet. They may suspect that insurance databases will reveal victimization to prospective insurance providers, potentially rendering the victim ineligible for insurance or at risk of being charged higher premiums.

A few model programs exist that never track the names of the victims for whom the exams are being paid because the transaction is one solely between the hospital and the program itself. In these cases, the program reimburses the hospital for however many exams are completed, often in a bill for all the exams for a particular month.

In 1998, OVC published a comprehensive plan for improving services and compensation for victims of violent crime; it contains 18 recommendations for upgrading state crime victim compensation programs.<sup>32</sup> The recommendations in the plan provide a broader framework for the following recommendations, which relate specifically to the role that victim compensation programs can play in ending violence against women.

## **The Role of Victim Compensation Program Administrators and Staff**

**1. Add categories of eligible expenses for which victims may be compensated that meet the compensation needs of abused and stalked women and girls.**

- ◆ Expand compensation to include expenses that may be the most critical costs faced by victims, including but not limited to costs for transitional housing, emergency transportation, security mechanisms, childcare, and destroyed necessities (for example, work clothing, schoolbooks, and business equipment).

**2. Establish catastrophic injury or permanent disability funds that are available beyond any compensation cap or time limit for preliminary compensation awards.**

- ◆ Consider authorizing payment for catastrophic injuries or permanent disability above the cap for regular compensation.
- ◆ Expand the use of supplemental awards to cover expenses incurred after initial awards are made.

**3. Cover the costs of forensic medical examinations for sexual assault victims in the absence of other state funds set aside for this purpose, and do not seek recoupment from the public or private health insurance of victims. (Do seek recoupment from any award of civil damages.)**

**4. Amend program eligibility requirements as necessary in consideration of the fact that victims of sexual assault, domestic violence, and stalking are often reluctant to report crimes to law enforcement and participate in the criminal justice process.**

- ◆ Extend deadlines for reporting sexual assault, dating and domestic violence, and stalking to law enforcement or other appropriate agencies.
- ◆ Eliminate the requirement that sexual assault victims report to law enforcement as a condition of eligibility for compensation or assistance, as permitted under revised VOCA guidelines.
- ◆ Expand the types of agencies to which reporting is permissible.

**5. Expand the types of victims eligible to receive counseling benefits.**

- ◆ Allow children and others who witness violence, but who are not themselves physically abused, to seek compensation for medical, mental health, and counseling services essential for their healing and restoration.

**6. Expand the class of eligible providers to include nonclinical providers of counseling and health services for victims of sexual assault, domestic violence, and stalking.**

- ◆ Define the class of eligible providers more broadly. Medical, mental health, and other licensed clinical services (i.e., the programs most often eligible) may not in all cases be accessible for or tailored to the specific treatment needs of victims of sexual assault, dating and domestic violence, and stalking. Consider including nontraditional health and counseling programs that provide competent and effective services to victims as eligible providers.
- ◆ Recognize that many victims, particularly those who are not English literate or who are hearing impaired, lesbians, women of color, immigrants, or older women, may prefer the restorative opportunities in alternative programs.

**7. Exempt victims from time requirements for filing claims when injuries or losses are not reasonably discovered until after application deadlines or after award periods have expired.**

- ◆ Permit extensions or allow claims to be reopened to reimburse eligible expenses up to the maximum state allotments, when injuries are not discovered during the period for application for or payment of compensation awards.

**8. Eliminate or narrowly define unjust enrichment.**

- ◆ Consider adopting proposed revised victim compensation guidelines that suggest that “states cannot deny compensation to a victim based on the victim’s familial relationship to the offender or because the victim shares a residence with the offender. States must adopt a rule or written policy to avoid unjust enrichment of the offender, but it cannot have the effect of denying compensation to a substantial percentage of victims of violence perpetrated by family members or others with whom the victim shares a residence.”<sup>33</sup>

**9. Establish and closely monitor guidelines for assessing exclusion criteria that result in denial of benefits to ensure criteria are narrowly tailored.**

**10. Review the state’s criminal code on stalking and eliminate any program requirement of physical contact or injury for eligibility for compensation when these are not essential elements in the law.**

**11. Develop and implement strategies to process claims, including emergency awards, expeditiously.**

**12. Ascertain why victims of sexual assault, domestic violence, and stalking are significantly underrepresented in the class of successful applicants for crime victim compensation. Undertake corrective measures to enhance appropriate disbursements to these victims.**

**13. Design outreach campaigns to target sexual assault survivors, battered women, and victims of stalking.**

- ◆ Develop public education programs about the existence of compensation for victims of crime.
- ◆ Expand vehicles for communication to include faith organizations, local radio talk shows, community cable programming, and women’s and social clubs for diverse groups in the community.

- ◆ Coordinate outreach efforts with crime victim specialists in law enforcement, prosecution, and community-based victim advocacy agencies.

**14. Provide training for victim service providers, law enforcement and court personnel, medical providers, and social services professionals on the availability of crime victim compensation, application procedures, and related information.**

**15. Ensure that all compensation program staff receive training on the prevalence, incidence, and impact of violence against women, the full scope of compensation available, and the availability of related community services.**

**16. Establish policies and procedures to maintain the privacy of applicants and the confidentiality of their records, addresses, and communications.**

- ◆ Prohibit disclosure of program records to other state agencies, law enforcement, courts, perpetrators, their agents, or third parties, except when limited disclosure is required for fiscal audits by the state and VOCA and for appropriate research.

- ◆ Inform applicants about the parameters and limitations of privacy and confidentiality protections.

**17. Conduct verification and recoupment processing with the utmost discretion.**

- ◆ Conduct inquiries of law enforcement, courts, employers, and insurance carriers without compromising the victim's privacy rights.

## Resources

### **Battered Women's Justice Project—Civil Division Pennsylvania Coalition Against Domestic Violence**

6400 Flank Drive, Suite 1300  
Harrisburg, PA 17112  
Phone: 1-800-903-0111, ext. 2  
Fax: 717-671-5542  
Web site: [www.pcadv.org/projects.html](http://www.pcadv.org/projects.html)

The Battered Women's Justice Project (BWJP) works with advocates and victim service providers to educate communities about domestic violence and ensure targeted, appropriate responses to cases of domestic violence. BWJP functions through a

partnership of three nationally recognized organizations: the Domestic Abuse Intervention Project, which addresses the criminal justice system's response to domestic violence (including the development of batterer programs); the Pennsylvania Coalition Against Domestic Violence, which addresses civil court access and legal representation issues of battered women; and the National Clearinghouse for the Defense of Battered Women, which addresses issues raised when battered women are accused of committing crimes, including killing an abusive partner.

### **Bureau of Alcohol, Tobacco and Firearms**

650 Massachusetts Avenue NW.  
Washington, DC 20226  
Phone: For information or complaints about federal firearms prohibitions, call 1-800-ATF-GUNS.  
Web site: [www.atf.treas.gov](http://www.atf.treas.gov)

The Bureau of Alcohol, Tobacco and Firearms (ATF) is the division of the U.S. Department of the Treasury that is responsible for enforcing federal laws and regulations relating to alcohol, tobacco products, firearms, explosives, and arson.

### **Family Violence Prevention Fund**

383 Rhode Island Street, Suite 304  
San Francisco, CA 94103-5133  
Phone: 415-252-8900  
Fax: 415-252-8991  
Web site: [www.fvpf.org](http://www.fvpf.org)

The Family Violence Prevention Fund works to end domestic violence and help women and children whose lives are affected by abuse. The Web site offers free online catalogs, articles and information on abuse and violence, press releases and story archives, information on public policy efforts, and other resource materials.

### **International Association of Chiefs of Police**

515 North Washington Street  
Alexandria, VA 22314  
Phone: 703-836-6767 or 1-800-THE-IACP  
Fax: 703-836-4543  
Web site: [www.theiacp.org](http://www.theiacp.org)

The International Association of Chiefs of Police (IACP) fosters cooperation and the exchange of

information and experience among police administrators throughout the world and advocates high professional standards of police performance and conduct. The IACP Web site provides information on training opportunities, conferences, awards, and campaigns, as well as links to *Police Chief Magazine* and other publications, information on international activities and outreach, and legislative and policy updates.

**National Association of Crime Victim Compensation Boards**

P.O. Box 16003  
Alexandria, VA 22302  
Phone: 703-313-9500  
Fax: 703-313-0546  
E-mail: nacvcb@aol.com

The National Association of Crime Victim Compensation Boards promotes the exchange of information and ideas through a nationwide network of victim compensation programs. The association supports better methods for serving crime victims through training and technical assistance activities that help members establish sound administrative practices, achieve fiscal stability, and engage in effective outreach, communication, and advocacy.

**National Center on Full Faith and Credit Pennsylvania Coalition Against Domestic Violence**

1601 Connecticut Avenue NW., Suite 701  
Washington, DC 20009  
Phone: 1-800-256-5883, ext. 2  
Fax: 202-265-5083

The National Center on Full Faith and Credit promotes interjurisdictional enforcement of civil and criminal protection orders (per the full faith and credit provision of the Violence Against Women Act of 1994). The project provides ongoing assistance and training on full faith and credit, federal firearms prohibitions, and federal domestic violence and stalking crimes to law enforcement officers, prosecutors, judges, court administrators and other court personnel, private attorneys, victim advocates, and others who work with victims of domestic violence and stalking.

**National Immigration Project of the National Lawyers Guild**

14 Beacon Street, Suite 602  
Boston, MA 02108  
Phone: 617-227-9727  
Fax: 617-227-5495  
Web site: [www.nlg.org/nip](http://www.nlg.org/nip)

The National Immigration Project is a network of legal practitioners who work to end unlawful immigration practices, recognize the contributions of immigrants in this country, promote fair immigration practices, and expand the civil and human rights of all immigrants. Project work groups study immigration issues including border violence, immigrant women, HIV and immigrants, children in detention, incarcerated noncitizen defendants, and ideological visa denials.

**National Instant Criminal Background Check System Operations Center**

Public Information/Customer Service  
Phone: 1-877-444-6427  
Web site: [www.fbi.gov/hq/cjisd/nics/index.htm](http://www.fbi.gov/hq/cjisd/nics/index.htm)

Developed and administered by the Federal Bureau of Investigation, the National Instant Criminal Background Check System (NICS) is a national computerized system that performs background checks on individuals purchasing firearms. State legislation dictates the method and requirements for firearms background checks in each state.

**National Sexual Violence Resource Center**

123 North Enola Drive  
Enola, PA 17025  
Phone: 717-909-0710 or 1-877-739-3895  
TTY: 717-909-0715  
Fax: 717-909-0714  
E-mail: [resources@nsvrc.org](mailto:resources@nsvrc.org)  
Web site: [www.nsvrc.org](http://www.nsvrc.org)

The National Sexual Violence Resource Center (NSVRC) is a clearinghouse for resources and research about all forms of sexual violence and assault. NSVRC works with its partner agency, the University of Pennsylvania, to provide new policies for establishing sexual violence interventions and prevention programs.



**Sacred Circle**  
**National Resource Center to End Violence Against Native Women**

722 St. Joseph Street  
Rapid City, SD 57701  
Phone: 605-341-2050 or 1-877-733-7623  
Fax: 605-341-2472

Sacred Circle promotes the sovereignty and safety of women and works to change individual and institutional beliefs that oppress Native women.

**Stalking Resource Center**  
**National Center for Victims of Crime**

2000 M Street, Suite 480  
Washington, DC 20036  
Phone: 202-467-8700  
Fax: 202-467-8701  
Web site: www.ncvc.org

The National Center for Victims of Crime's (NCVC's) mission is to help victims of crime and their families rebuild their lives. The Stalking Resource Center provides resources, training, and technical assistance to criminal justice professionals and victim service providers to support locally coordinated, multidisciplinary antistalking approaches and responses.

## Endnotes

1. Violence Against Women Office (1995). *Confidentiality of Communications Between Sexual Assault or Domestic Violence Victims and Their Counselors: Findings and Model Legislation*. Washington, DC: U.S. Department of Justice. NCJ 169588. Congress ordered the U.S. Department of Justice (see 42 U.S.C. § 13942) to analyze the justification for keeping confidential the communications between sexual assault or domestic violence counselors and victims. This report is the result of that Congressional mandate.

2. For example, Ala. Code §§ 15-23-40 to -46 (2000); Alaska Stat. §§ 18.66.200-.250 (Michie 2000); Ariz. Rev. Stat. 13-4401, -4430, 8-409 (2000); Cal. Evid. Code §§ 1035-1035.8, 1036, 1036.2, 1037-1037.7 (West 2000); Colo. Rev.

Stat. § 13-90-107 (2000); Conn. Gen. Stat. § 52-146k (2000); D.C. Code Ann. § 7-1201.01 (1999); Fla. Stat. Ann. §§ 90.5035, 5036 (West 1999); Haw. R. Evid. 505.5 (2000); 735 Ill. Comp. Stat. 5/8-802.1, .2 (2000), 750 Ill. Comp. Stat. 60/227, 60/227.1 (2000); Ind. Code §§ 35-37-6-1 to -11 (1999); Iowa Code Ann. § 915.20A (West 1999); Ky. R. Evid. 506; La. Rev. Stat. Ann. § 46:2124.1 (West 2000); Me. Rev. Stat. Ann. 16 tit. §§ 53-A to -C (West 1999); Mass. Gen. Laws Ann. ch. 233, §§ 20J, K (West 2000); Mich. Comp. Laws Ann. § 600.2157a (West 2000); Minn. Stat. Ann. § 595.02(k) (West 2000); Mont. Code Ann. § 26-1-812 (1999); N.H. Rev. Stat. Ann. § 173-C:1-10 (1999); N.J. Stat. Ann. 2A:84A-22.13-.15 (West 2000); N.M. Stat. Ann. 1978 §§ 31-25-1 to -6 (Michie 2000); N.Y. C.P.L.R. 4510 (Consol. 1999); N.D. Cent. Code § 14-07.1-.18 (2000); Okla. Stat. Ann. tit. 43A § 3313 (West 1999); 23 Pa. Cons. Stat. Ann. §§ 6116, 5309 (West 1999); Tenn. Code Ann. § 36-3-623 (1999); Tex. Code Ann. §§ 44.071-.075 (Vernon 2000); Utah Code Ann. §§ 78-3C-1 to -4, -24-8 (1999); Vt. Stat. Ann. tit. 12, § 1614 (2000); Wash. Rev. Code Ann. §§ 70.123.075, 42.17.310, 70.125.065, 5.60.060 (West 2000); W. Va. Code § 48-2C-15 (2000); Wis. Stat. Ann. § 895.67 (West 1999); Wyo. Stat. Ann. § 1-12-116 (Michie 2000).

3. Violence Against Women Office (1995). *Confidentiality of Communications Between Sexual Assault or Domestic Violence Victims and Their Counselors: Findings and Model Legislation*. Washington, DC: U.S. Department of Justice. NCJ 169588. Identifying four elements that are necessary to establish a testimonial privilege, this report concludes that there are persuasive policy arguments supporting the protection of counselor-victim communications.

Citing Wigmore, J.H. (1961). *Evidence in Trials of Common Law* (Vol. VIII §§ 2175-2396). Boston: Little Brown and Co.:

- a. Communications between victims and counselors originate in confidence.
- b. Confidentiality is essential.

c. Society supports the counselor-victim relationship.

d. Disclosure injures the counselor-victim relationship more than it benefits litigation.

4. Violence Against Women Office (1995). *Confidentiality of Communications Between Sexual Assault or Domestic Violence Victims and Their Counselors: Findings and Model Legislation*. Washington, DC: U.S. Department of Justice. NCJ 169588. This report presents model confidentiality laws, including one for an absolute privilege and one for a qualified privilege.

5. For example, Cal. Gov't Code §§ 6205 et seq. (2000); Fla. Stat. ch. 741.401 et seq. (1999); 750 Ill. Comp. Stat. 61/1 et seq. (2000); Nev. Rev. Stat. §§ 217.462 et seq. (2000); N.H. Rev. Stat. Ann. §§ 7:41 et seq. (Enacted June 12, 2000); N.J. Stat. Ann. §§ 47:4-2 et seq. (West 2000); R.I. Gen. Laws §§ 17-28-1 et seq. (2000); Vt. Stat. Ann. tit. 15, ch. 21 § 1101–1115 (Act of May 12, 2000); Wash. Rev. Code Ann. §§ 40.24.010 et seq. (West 2000).

6. For further information, see [www.ssa.gov](http://www.ssa.gov).

7. A model confidentiality policy can be obtained from the Battered Women's Justice Project—Civil Division of the Pennsylvania Coalition Against Domestic Violence (1–800–903–0111, ext. 2) and can be found in Field, J.K. (Forthcoming). *The Confidentiality Manual: Protecting Confidentiality of Victim-Counselor Communications*. Harrisburg, PA: Battered Women's Justice Project—Civil Division of the Pennsylvania Coalition Against Domestic Violence.

8. One of these provisions allows a married battered immigrant to apply for lawful permanent residency without the assistance of her spouse if she has been subjected to extreme cruelty by her U.S. citizen or lawful permanent resident husband and is a person of good moral character. This process is called “self-petitioning” and removes the abusive spouse's ability to control his wife's immigration status. Self-petitioning is also available to children abused by their U.S. citizen or lawful

permanent resident parents and to parents of abused children who are not abused themselves.

A second provision, “cancellation of removal” (formerly called “suspension of deportation”), helps women who cannot meet the requirements for self-petitioning. To qualify for cancellation of removal, an applicant must be deportable; must have been battered or subjected to extreme cruelty by a U.S. citizen or lawful permanent resident spouse or parent or must have a child abused by the child's U.S. citizen or lawful permanent resident parent; must have been continuously present in the United States for 3 years; and must be a person of good moral character. Cancellation of removal is one step toward ending the threat of deportation, which many battered immigrant women fear nearly as much as the abuse.

9. The Violence Against Women Act of 2000 extends protections to battered immigrants who divorce their abusers within 2 years of seeking VAWA relief.

10. Violence Policy Center (2000). *When Men Murder Women: An Analysis of 1998 Homicide Data*. Washington, DC: Violence Policy Center. [www.vpc.org](http://www.vpc.org)

11. Ibid.

12. See 18 U.S.C. §§ 921–930.

13. Persons to whom firearms may not be sold or otherwise provided are fugitives from justice, unlawful users of any controlled substance, persons under indictment for or convicted of a crime punishable by imprisonment for more than 1 year, persons who have been adjudicated mentally defective or committed to a mental institution, aliens unlawfully in the United States, persons discharged from the Armed Forces under dishonorable conditions, persons who have renounced their U.S. citizenship, persons who have been convicted of misdemeanor domestic violence, or persons subject to a court order restraining them from harassing, stalking, or threatening an intimate partner or child. See 18 U.S.C. § 922(d).

14. Hart, B.J. (1999). Firearms and Protection Order Enforcement: Implications for Full Faith and Credit and Federal Criminal Prosecutions. Lecture presented at the National College of District Attorneys' Annual Domestic Violence Conference, Reno, NV.

15. 18 U.S.C. § 922(t).

16. U.S. General Accounting Office (2000). *Gun Control: Options for Improving the National Instant Criminal Background Check System*. Washington, DC: U.S. General Accounting Office. p. 4 (GGD-00-56). Fifteen states have designated a state agency to conduct background checks on all firearms purchases, and in 24 states, the Federal Bureau of Investigation (FBI) conducts firearms background checks. The 11 remaining states are partial participants; they conduct background checks for handgun purchases, and the FBI conducts checks for long gun purchases.

17. States have the option of designating a state agency to undertake state background checks or to serve as the point of contact to conduct NICS checks. States conducting their own background checks have access to criminal records systems and other databases not available through the NICS system. For example, many protection orders that disqualify persons from possessing or purchasing firearms and ammunition under 18 U.S.C. § 922(g)(8) are not available in the NCIC Protection Order File, due to incompatibilities between state protection order registries and NCIC or the fact that many states do not enter their orders into any database, state or federal. In other states, orders may be rejected by the NCIC system because information in one or more of the required data fields has not been supplied. If the state runs a check of its own databases, including its protection order registry, it is more likely that such a prohibition will be identified.

18. Such protocols should provide specific steps to clarify the roles and responsibilities of each agency. Protocols should address:

- ◆ Circumstances under which local law enforcement should confiscate firearms and hold alleged perpetrators for pickup by ATF.
- ◆ Identification of the agency to which referrals should be made and the point of contact within the appropriate agency.
- ◆ Coordination of prosecution in cases for which both federal and state charges are pursued.
- ◆ Specification of the type and scope of evidence federal prosecutors need to go forward with cases.
- ◆ Cooperation between local victim service specialists and advocates and the victim/witness specialist within the local U.S. Attorney's Office.
- ◆ Appropriate storage of confiscated firearms.
- ◆ Guidelines for victims or advocates for contacting local law enforcement, ATF, or the point of contact within the local U.S. Attorney's Office regarding potential violations of federal laws.

19. Enacting firearms provisions in protection order codes, bail statutes, and sentencing codes or guidelines is only the first step in the process of removing firearms from perpetrators of violence against women. Many states currently allow judges to order the relinquishment of firearms, ammunition, handgun permits, and/or identification cards when issuing protection orders. However, some judges are ambivalent about issuing these orders. Some judges indicate that their reluctance to issue firearms prohibitions is because victims do not want firearms removed, and other judges believe that firearms prohibitions should be extraordinary relief, imposed only when there is a clear and present danger that the firearms will be used against adult victims and children.

20. Many protection order statutes allow judges to exercise broad discretion to order any supplementary relief deemed necessary to prevent future abuse.

21. A firearms face sheet should include the names of persons required to relinquish weapons, the number and description of prohibited weapons, ammunition, licenses or permits, the date and time

by which the items must be surrendered, and the law enforcement agency to which surrender must be made.

22. Law enforcement frequently reports that storage facilities are insufficient for the requirements of these surrender statutes. In one state, the local National Guard offices have agreed to use armories for this purpose. Other creative strategies may have to be explored to accommodate weapons storage.

23. In developing protocols, state and local officials should note that ATF has interpreted the firearms prohibition related to protection orders to create an exemption for law enforcement to apply only for the time personnel are on duty and only for use of service firearms (see 18 U.S.C. § 925(a)(1)). State and local law enforcement may establish personnel guidelines that are more restrictive than federal law.

24. Quality-control checks should be put in place to ensure that the protection order form includes information for all required data fields prior to entry into NCIC. In the case of numeric identifiers, for example, an agency should be designated to search the issuing state's motor vehicle or other records to find an NCIC-compliant number if the petitioner or court is unable to supply one.

25. A "Brady indicator" is a marker within the NICS Protection Order File showing that an individual falls under the category of federally prohibited persons by being the subject of a qualifying order of protection.

26. Currently, entering agencies have the choice of entering "Yes," "No," or "Unknown" to indicate whether an order qualifies under Section 922(g)(8). If nothing is entered, the field will default to "No." If a qualifying order has nothing entered in the Brady indicator field, this could result in the sale of a firearm to a disqualified person, thus placing the victim/petitioner and others in jeopardy. If there is nothing on the face of a protection order to indicate whether it qualifies under Section 922(g)(8), steps should be taken to gather information from the issuing court regarding qualification.

In the absence of such information, "Unknown" should be entered to indicate that this information will require further investigation by the FBI when a NICS check is conducted.

27. Puerto Rico recently set up a compensation program and soon will receive funds also.

28. Newmark, L., Lider, B., Benderman, J., and Smith, B. (2001). *National Evaluation of State VOCA Compensation and Assistance Programs*. Washington, DC: The Urban Institute.

29. Ibid.

30. Compensation programs currently reimburse victims for wages lost due to violence and compensate survivors of homicide victims or drunk driving fatalities for their loss of support. Compensation funds do not pay for the loss of support when the obligor is the perpetrator of sexual assault, dating or domestic violence, or stalking. Thus, if the perpetrator flees or is incarcerated, compensation programs do not pay for lost support due by the perpetrator to the victim.

31. Burt, M.R., Zweig, J.M., Schlichter, K., Kamya, S., Katz, B.L., Miller, N., Keilitz, S., and Harrell, A.V. (2000). *2000 Report: Evaluation of the STOP Formula Grants to Combat Violence Against Women*. Washington, DC: The Urban Institute.

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32. Office for Victims of Crime (1998). *New Directions From the Field: Victims' Rights and*



*Services for the 21st Century*. Washington, DC: U.S. Department of Justice. NCJ 180315

33. Office for Victims of Crime (2000). "Proposed Program Guidelines for the Victims of Crime Act Crime Victim Compensation Grant Program." *Federal Register* (September 20, 2000) 63: pp. 57067–57076. Section IV.B.7. p. 57073. [www.access.gpo.gov/su\\_docs/fedreg/a000920c.html](http://www.access.gpo.gov/su_docs/fedreg/a000920c.html)

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